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By. of Marshall for P. C.
Supreme Court, U.S.
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JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States,

OCTOBER TERM, 1901.

Filed April 10, 1902.

THE BOSTON AND MONTANA CONSOLIDATED COPPER AND SILVER MINING COMPANY,
PLAINTIFF IN ERROR,

vs.

THE MONTANA ORE PURCHASING COMPANY, F. AUGUSTUS HEINZE and ARTHUR P. HEINZE,
DEFENDANTS IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MONTANA.

BRIEF FOR PLAINTIFF IN ERROR.

LOUIS MARSHALL,
JOHN F. FORBIS,
Appellant's Counsel.

APPEAL PRINTING CO., 14-16 VESEY STREET, N. Y.

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Supreme Court of the United States,

OCTOBER TERM, 1901.

THE BOSTON AND MONTANA CONSOLIDATED COPPER AND SILVER MINING COMPANY, Plaintiff-in-Error, against THE MONTANA ORE PURCHASING COMPANY, F. Augustus Heinze and Arthur P. Heinze, Defendants-in-Error.	On Writ of Error to and Certificate from the Circuit Court of the United States, District of Montana. No. 328.

Brief for Plaintiff-in-Error.

This action was brought by the plaintiff in error against the defendants in error to recover Five hundred thousand dollars, damages sustained by the plaintiff-in-error by reason of the alleged wrongful taking by the defendants-in-error of ore alleged to belong to the plaintiff-in-error; the ore being extracted from beneath the surface of the Pennsylvania lode claim, the defendants-in-error claiming that the ore belonged to the Rarus lode

claim or that portion of the Johnstown lode claim which had been conveyed to them (Rec. pages 1-16).

The questions involved in this action are identical with those presented by the record in the case of the Boston and Montana Consolidated Copper and Silver Mining Company v. The Montana Ore Purchasing Company, F. Augustus Heinze and Arthur P. Heinze, October Term, 1901, No. 329, which is argued herewith.

The only difference between the two cases is that this is an action at law, while No. 329 is a suit in equity arising out of the same transactions, and that in the present case the defendants interposed no answer to the amended complaint, but demurred.

The demurrer appears at page 16 and is upon the grounds:

First. That the Court has no jurisdiction of the subject matter of this action.

Second. That it appears from the complaint that no federal question is involved in the action, and that the controversy existing between the parties does not involve the construction of any statute or law of the United States.

Third. That the complaint does not state facts sufficient to constitute a cause of action.

The demurrer was sustained, and the action was dismissed on the ground of want of jurisdiction (Rec., page 17).

Thereupon a certificate of the question of jurisdiction was made by Judge Knowles, by whom the case was decided, showing that the ground of his decision was that a federal question was not presented by the allegations of the amended com-

plaint, and that in consequence thereof there was no jurisdiction in the Circuit Court of the United States over this action (Rec., pages 18-24).

Error was duly assigned upon these rulings and a writ of error was duly allowed (Rec., page 26).

The discussion of the questions presented by the amended complaint and demurrer herein, involving the same considerations as have been fully presented in cause No. 329, a repetition of the argument is deemed unnecessary, but the Court is respectfully referred to the appellant's brief and argument in that case, so far as the same is applicable.

For the reasons there stated it is respectfully submitted that the judgment of the Circuit Court of the United States for the District of Montana, heretofore rendered herein, should be reversed and the action remanded to that Court with instructions to proceed therewith.

LOUIS MARSHALL,
JOHN F. FORBIS,
Counsel for Plaintiff-in-Error.